

## **CONSUMER RIGHTS UNDER THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

**By: CPT Andrew Burnett**

Nearly every consumer purchases items on credit. When this happens, the consumer has taken out a debt; the person or business to which the consumer owes the debt is called a creditor. When a consumer fails to pay the debt, the creditor may hire a third party to collect it. This third party is referred to as a debt collector. The Fair Debt Collection Practices Act (FDCPA) is a law designed to protect debtors from abusive practices of debt collectors.

The FDCPA applies only to third party debt collectors and not to the creditors themselves. To determine whether a business is subject to the FDCPA, ask whether the business is acting primarily to collect an amount owed to another company.

### **IF YOU ARE CONTACTED BY A DEBT COLLECTOR**

If you are contacted by a debt collector, first be careful not to acknowledge the debt or give the debt collector any personal information. Second, request that the debt collector mail you information verifying the debt. Under the FDCPA, the debt collector has 30 days to provide you with the debt amount and the name of the original creditor. Sometimes, the debt might be so old that you don't have to pay it anymore.

If the debt collector threatens to contact your employer or command, simply assert that they are not allowed to do so under the FDCPA. Debt Collectors are NOT allowed to communicate with third parties (other than your attorney or a credit reporting agency) about debt collection. This means the debt collector can't contact your command.

Be aware the FDCPA in general prohibits debt collectors from engaging in "abusive and deceptive" conduct, including:

- Contacting you between the hours of 2100-0800.
- Threatening to take any action that cannot legally be taken or is not intended to be taken.
- Using false, deceptive, or misleading representations in connection with the collection of a debt.
- Causing your phone to ring repeatedly and continuously for the purpose of annoying or harassing you.
- Contacting you after receiving written notice that you wish no further contact.

### **IF A DEBT COLLECTOR VIOLATES YOUR RIGHTS UNDER THE FDCPA**

Simply telling the debt collector that they are violating your rights under the FDCPA may be the most immediate way to get a debt collector to refrain from violations. If this does not work, the next step is to write a letter to the debt collector stating their violations, the legal remedies for these

violations, and request they refrain from further violations. An attorney in the Legal Assistance Office can help with this.

If the debt collector sues you for collection of the debt, you can assert any violations of the FDCPA as a counter-claim against the debt collector. You can also file a lawsuit against a debt collector for the violations.

If you can prove the debt collector violated the FDCPA, you may be able to collect the following kinds of damages:

- Statutory damages up to \$1,000, depending on the frequency and nature of the violations, and whether they were intentional.
- Damages you actually sustained as a result of the violations, such as personal humiliation, embarrassment, mental anguish, and emotional distress.
- Reasonable attorney's fees and court costs; however, if the court finds you sued the debt collector without a good faith belief the debt collector violated the FDCPA, it may award attorney's fees to the debt collector.

Note that debt collectors won't be held liable for violations of the FDCPA unless the debtor can show that the violations were more likely than not intentional.

If you are being harassed by a debt collector and need to speak with an attorney, please call the XVIII Corps Legal Assistance Office (910-396-0396), the 82D Airborne Division Legal Assistance Office (910-432-0195), or the 1st Sustainment Command Legal Assistance Office (910-396-9800) to make an appointment.